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# Narrative and the Origins of Law

Allison Tait and Luke Norris\*

As Robert Cover reminded us in *Nomos and Narrative*, law is inescapably replete with stories, and ‘[f]or every constitution there is an epic, for each decalogue a scripture’.<sup>1</sup> Law is full of stories, whether these are stories that are told in the courtroom as lawyers try to weave together compelling and competing versions of an event, in the legislative histories that subtend a body of statutes, or in stories about the origins and acceptance of legal systems. In the traditional law and literature context, the primary focus on stories in the law is to analyse the narrative forms they take within the courtroom. There is, however, a set of narratives that preexists the narratives that develop in and around the courtroom. These are stories about the genesis and development of law itself, prior to its arrival in the courtroom and prior even to its acceptance via the historical moments of constitutional writing. These stories about the origin of law take the reader back to a time and place before the establishment of legal structures and ask the reader to imagine the ‘state of nature’ or the ‘original position’—moments when socio-legal institutions, codes, and norms of justice are not yet entrenched or even written down, when everything is still up for debate. These narratives present the reader with a privileged moment of contracting, the acceptance of an agreement to the mutual benefit of all newly minted citizens, and imply a final and perpetual rule of law and reign of justice. These social contract narratives help to define law, and its essential qualities and goals, as much as any other legal narratives, and they lay the groundwork for subsequent understandings of how law should operate.

Building stories about a population joining together to form a social contract, these narratives all share a deep family resemblance. Whether the theory is written in pre-revolutionary France or post-cold war America, social contract narratives across time and culture share fundamental elements that connect them as iterations of what one might call a super-narrative or a ‘masterplot’. In each instance, the social contract narrative begins in a pre-contract space, one that each social contract theorist artfully tailors to his own end and populates with individuals who are at various points self-

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<sup>1</sup> Robert Cover, ‘The Supreme Court, 1982 Term-Foreword: Nomos and Narrative’ (1983) 97 *Harvard Law Review* 4, 4.

interested, sympathetic, shortsighted, and reasonable. Once the landscape and populace are established, each contract narrative seeks to justify and explain the transition from this original world to one of legal order and self-government by creating a very unique moment of contracting. Finally, once the contract is made and inhabitants become citizens, each of these contract narratives closes with a very definite ‘sense of an ending’ that places the entire story in a linear context. The narrative thus produces the contract of an evolutionary path toward widespread justice and the rule of law.

Given that social contract narratives share so many basic narrative elements, one of the best tools for understanding and decoding them is narratology. Thinkers as early as Aristotle remind us that narratives are ‘a formal organization of temporality’,<sup>2</sup> or ‘a way of making sense of time-bound experience’,<sup>3</sup> and narratology belongs to the ‘analytic branch of rhetoric, to the operations by which one takes apart and studies an utterance or text’.<sup>4</sup> More specifically, narratology ‘pays attention to the parts of a narrative and how they combine in a plot; to how we understand the initiation and completion of action; to standard narrative sequences (stock stories, one might say); and to the movement of a narrative through a state of disequilibrium to a final outcome that re-establishes order’.<sup>5</sup> Narratology enables us to make sense of political and legal time through its insistence on understanding stories in relation to their parts and ends, which, of course, also form their beginnings. Narratology is a critical tool in making sense of the time-bound experience of social contract order, of the formal organisation of political and legal time. It enables us to see how the narrative parts of these sequences combine to form plots that make distinct narrative footprints that shape our understanding of consent and law. As Peter Brooks suggests, ‘Narratives do not simply recount happenings; they give them shape, give them a point, argue their import, proclaim their results’.<sup>6</sup> Narratology can therefore help to determine not only what elements of a story repeat in each instance, reconfirming significance through the act of repetition, but also what purpose the repetition serves, whether it be to increase understanding or imply legitimacy.

In order to understand these distinct narratives of legal origin through the tools of narratology, we will proceed in several steps. First, we will define more precisely the set of social contract theories that we consider. We will discuss our decision to narrow the focus down to two social contract theorists in particular, one contemporary and one classical, John Rawls and Jean-Jacques Rousseau. These two theorists seem worlds apart in many respects—yet the tools of narratology will enable us to see their shared enterprise. Second, the tools of narratology will help us to identify and discuss the component parts

2 Peter Brooks, ‘Narrative Transactions: Does the Law Need a Narratology?’ (2006) 18 *Yale Journal of Law & the Humanities* 1, 24.

3 *Ibid.*

4 *Ibid.*, 19.

5 *Ibid.*, 24.

6 *Ibid.*, 13.

that define social contract narratives, namely, the creation of an original space and situation, the description of the act of contracting, and the way in which endings are used to frame and position all of the moving pieces into one linear and evolutionary storyline. We will then examine why narratology yields an interesting and fruitful analysis of these narratives. In concluding, we will link this endeavour to future ones, in which we intend to use the tools of ‘law and literature’ to make sense of the narratives, in theory and in practice, that give rise to and sustain legal and political order.

## I. SOCIAL CONTRACT THEORY

Few narratives hold as much sway in the political-legal imagination as that of the social contract. It is the intellectual foundation of the notion of consent, the once-foreign and now-familiar idea of people joining together to submit themselves voluntarily to the rule of law. The narrative is now so familiar as to be almost indispensable. It is also remarkably similar across iterations even though its theorists span some three centuries, writing in vastly different contexts and starting from often-different understandings of human society and history. This is not to say that all social contract narratives are the same. For one, social contract theorists often reach different ideal states. For John Locke the end is the state as ‘neutral judge’,<sup>7</sup> for Thomas Hobbes it is the ‘sovereign’,<sup>8</sup> for Jean-Jacques Rousseau the ‘general will’,<sup>9</sup> and—jumping forward in time—for John Rawls, the principles of justice embodied in distinct liberal institutions.<sup>10</sup> For theorists like Rousseau or Hobbes, the contract narrative is intertwined with a related theory of man, his nature, and the iterative process of aligning political systems with this nature. Rawls, however, has a distinctly different perspective and says that ‘our reasoning no more commits us to a metaphysical doctrine about the nature of the self than our playing a game like Monopoly commits us to thinking that we are landlords engaged in a desperate rivalry, winner take all’.<sup>11</sup> Rawls thus considers his original position as a ‘device of representation’ which is ‘hypothetical and non historical’.<sup>12</sup>

Yet social contract narratives—from classical ones like those of Locke, Hobbes and Rousseau, to the modern version as embodied most distinctly by Rawls—share a similar narrative arc. They broadly envision persons gathering under conditions either unknown or pre-political, and coming together to form a contract in which they give up the aspiration to personal power to enjoy the benefits of collective order. They also, more

<sup>7</sup> John Locke, *Two Treatises of Government* (1869).

<sup>8</sup> Thomas Hobbes, *Leviathan* (1651).

<sup>9</sup> Jean-Jacques Rousseau, *The Social Contract* (Wordsworth, 1998 [1762]).

<sup>10</sup> John Rawls, *A Theory of Justice* (Harvard University Press, 6th edn 1999 [1971]).

<sup>11</sup> John Rawls, ‘Justice as Fairness: Political not Metaphysical’ (1985) 14 *Philosophy and Public Affairs* 223, 239.

<sup>12</sup> *Ibid.*

importantly for our purposes, share a set of narrative tools embodied in what we call the social contract masterplot. To unpack this masterplot in detail, we focus on two theorists, John Rawls and Jean-Jacques Rousseau. We have chosen them from the cohort precisely because of their differences, which are many. First, an ocean and two centuries separate them. Second, Rawls is not a state of nature theorist and he offers his original position as a ‘hypothetical device’, while Rousseau offers one of the most vivid accounts of the state of nature, replete with evolutionary narrative tendencies. Third, Rousseau’s collectivism stands in stark contrast to Rawls’ individualism. Fourth, their styles are deeply different. If Rousseau’s theory contains the artfulness of the novelist, Rawls’s contains the dryness of the philosophical technician. And yet they each provide ample evidence for us to draw from in bringing to life their shared elaboration of the social contract masterplot.

## II. ELEMENTS OF THE SOCIAL CONTRACT MASTERPLOT

Despite differences in historical setting, cultural embeddedness and stylistic presentation, common elements recur and connect Rousseau’s narrative about a group of people coming together to accept the social contract with Rawls’s narrative about the nameless population behind the veil of ignorance that chooses a just society. As both theorists attempt to tell the story of transitions from an unjust to a just distribution system, they use not only similar ‘plot-points’ but also similar narrative techniques to create a recognisable drama. Our next step is to briefly examine what these elements—both formal and substantive—are.

### A. Creation of Space in Social Contract Theory

The first plot-point we examine is the creation of a space that is the site for imaginative possibility. Narrative structure allows an author to construct an imaginary universe, a verbal background that locates action and grounds the narratives physically and geospatially. The creative space produced by fiction is an experimental space in which the author can play with plotlines and outcomes; it is a Russian battlefield, an English country estate, an absurd government office, or a dark and claustrophobic room, somewhere the characters can engage in action and consequence. This is a quality that Mikhail Bakhtin calls ‘chronotope’, in which ‘space becomes charged and responsive to the movements of time, plot, history’.<sup>13</sup> Bakhtin briefly mentions a number of spaces that embody this

<sup>13</sup> MM Bakhtin, ‘Forms of Time and of Chronotope in the Novel: Towards a Historical Poetics’ in B Richardson (ed), *Narrative Dynamics: Essays on Time, Plot, Closure, and Frames* (Ohio State University Press, 2002). Bakhtin defines chronotope as ‘the intrinsic connectedness of temporal and spatial relationships that are artistically expressed in literature’ (p 15). In this particular piece we will focus on the time and plot elements of chronotope, but it is also possible to see the applicability of history to this discussion as well when we talk about constitutional narratives.

fusion, including ‘the road’, castles, salons or cafes, and the provincial town. He also identifies what might be termed ‘micro’ chronotopes such as the threshold, the staircase, and the front hall. These are the spaces, he says, that ‘are the organizing centers for the fundamental narrative events of the novel. The chronotope is the place where the knots of narrative are tied and untied.’<sup>14</sup>

The organising centres in social contract narratives are geographical spaces where a distinct population of persons comes together to deliberate on a contract that will remove them from personal power. Pre-contract spaces pull together time and plot and, in fact, share the goal of creating space outside of time with the sole intent of bringing the space and the population into a collective unit, an ordered sphere upheld by contract, through plotted decision-making. Social contract theorists therefore position their stories within spaces that are, to begin with, very much outside of time. Here the space outside of time is meant to be a pause, the moment before the historical reality for Rousseau, or a moment that persons can pick up from their present reality as a hypothetical representation for Rawls.<sup>15</sup> And although the theorists paint the landscapes with different colours and details, similarities persist in that in social contract worlds there is not only an atemporal universe, but also a bounded space that contains a bounded population. These pre-contract lands are fully self-contained universes that function as important hypothetical spaces, whether they take place against a backdrop of untamed natural beauty or an undefined original position.

Consider first this state in Rousseau, who begins by imagining a primitive state that must not be considered as ‘historical truth’ as it is intended ‘to illuminate the nature of things, [rather] than to ascertain their actual origin’.<sup>16</sup> Rousseau in fact counterposes his account of an origin with an historical account, saying: ‘O man ... here, as I have read it, is your history, not in the books of your fellow men who lie, but in nature which never lies.’<sup>17</sup> Inspired, then, by nature, Rousseau’s landscape is an earth ‘left to its natural fertility and bespread with immense forests never hewn by an axe’.<sup>18</sup> A reader has no sense of the physical location or boundaries of the site, nonetheless she has a well-defined visual image of the contours of the land: lush, fertile, and free from what Rousseau calls ‘the taint’ of modern industry and illness, and she knows that this land is a land before time, so to speak. To underscore that this is not a historical story, Rousseau tells the reader that he will not indulge in questions of the evolution of man—whether he had talons and was covered in hair—but prefers to ‘suppose [man] to have been at all times formed as I see him today, walking on two feet ... and measuring with his eyes the vast expanse of

<sup>14</sup> *Ibid.*, 22.

<sup>15</sup> These theoretical spaces exist in much the way as the prelapsarian space, yet in this context with the morally preferable outcome constituting the ‘after’ rather than the ‘before’.

<sup>16</sup> Jean-Jacques Rousseau, *Discourse on the Origin and Basis of Inequality Among Men*, Franklin Philip (trans) (Oxford University Press, 1994 [1754]) 24 (hereinafter *Discourse*).

<sup>17</sup> *Ibid.*, 25.

<sup>18</sup> *Ibid.*, 26–27.

heaven'.<sup>19</sup> That is to say, man exists in a subsistence state of being, unencumbered by modern neuroses or luxuries.<sup>20</sup> Like the novelist he is—the creator of the idyllic Clarens—Rousseau handpicks certain elements of reality and packages them into a form that is cognisable even if they pointedly do not track to any specific moment or location. Rousseau creates a contained, imaginative space and a delimited set of persons and directs the reader's gaze to rest on this closed universe and defined group of people, whose desires, motivations and interactions the reader will come to understand.

In a more modern articulation, we find a very similar method of space creation and purposeful design in Rawls. Rawls directs our attention to individuals who 'coexist together at the same time on a definite geographical territory',<sup>21</sup> are 'roughly similar in mental and physical power'<sup>22</sup> so that 'no one among them can dominate the rest' and yet live in conditions of 'moderate scarcity',<sup>23</sup> which are exacerbated by 'conflict of interests'.<sup>24</sup> Thus, though Rawls does not conjure his contract from a state of nature, purposefully avoiding the discussion of what a 'state of nature' would entail,<sup>25</sup> he does provide an imagined space in which to set the circumstances of the social contract. He gives us a set of persons who are absorbed with their own affairs, but not maliciously so, and places them behind a veil, in an 'original position' where they will not know their status or even identity in the society into which they are contracting. In this disconnected population that gathers behind the original position,

no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability, to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong.<sup>26</sup>

Where Rousseau's setting is floral and luxuriant, Rawls's is sparse and intentionally devoid of colour and texture. Gone are Rousseau's woodlands and streams, replaced by a sterile and undescribed space that is imaginatively darkened by the veil. Despite these descriptive differences, however, the space of the original position and Rousseau's state of nature share the quality of existing outside of history, in a hypothetical, bounded scape that is

<sup>19</sup> *Ibid*, 26.

<sup>20</sup> *Ibid*.

<sup>21</sup> Rawls (n 9) 109.

<sup>22</sup> *Ibid*, 109–10.

<sup>23</sup> *Ibid*, 110.

<sup>24</sup> *Ibid*, 109.

<sup>25</sup> See Rawls (n 11) 238 (stating that the 'veil of ignorance, to mention one prominent feature of that position, has no metaphysical implications concerning the nature of the self').

<sup>26</sup> Rawls (n 9) 118.

designed to enable the specific action that will take place between all inhabitants of this space.

## B. The Contract: The Space Transformed

From this space and its possibilities, our persons then come together to establish a contract that will inaugurate the turn from personal power, and its maladies, to collective union under law. The social contract narratives all operate on a linear ‘chaos to order’ plotline that varies very little. Men and women are posited in a *wrinkle in time* where they must contend with competing ideas of the good, differing notions of ownership, and a limited pool of social and material resources. This produces conflict: things, in Rousseau’s words, reach a point where the ‘primitive condition can no longer subsist’.<sup>27</sup>

This is Rousseau’s launching point in *The Social Contract*, and he starts by asking how the processes of change and decision-making can be rendered ‘legitimate’,<sup>28</sup> since ‘[t]he strongest man is never strong enough to be always master, unless he transforms his power into right, and obedience into duty’.<sup>29</sup> The answer of course is through contract. This act of contracting is momentous in nature and lays the foundation for the shift from ideal to real.

Forthwith, instead of the individual personalities of all the contracting parties, this act of association produces a moral and collective body ... This public person, which is thus formed by the union of all the individual members, formerly took the name of city, and now takes that of republic or body politic.<sup>30</sup>

Individuals lose their status as individuals; a collective is formed and ‘the union is as perfect as it can be’.<sup>31</sup> Man trades natural liberty for civil liberty, private identity for public, and the transformation is complete. The contract is sealed.

Like Rousseau, Rawls creates a human psychology and set of conditions before the contract that make possible its formation. Rawls tells us that society is ‘typically marked by a conflict as well as an identity of interests’.<sup>32</sup> The identity of interests exists since ‘social cooperation makes possible a better life for all than any would have if each were to try to live by his own efforts’. And there is conflict since men each ‘prefer a larger to a lesser share’. Just like Rousseau’s strong man who must transform his power into right, Rawls notes that the ‘ideals of saints and heroes’ are unacceptable individual interests.<sup>33</sup> In short, though Rawls may not describe the conflict of interests with the flourish of

<sup>27</sup> Rousseau (n 9) 10.

<sup>28</sup> *Ibid.*, 5.

<sup>29</sup> *Ibid.*, 8.

<sup>30</sup> *Ibid.*, 15–16.

<sup>31</sup> *Ibid.*

<sup>32</sup> Rawls (n 10) 109.

<sup>33</sup> *Ibid.*, 112.

Rousseau, he animates no less, and provides the identity of interests as a source for, the movement beyond the realm of personal power.

To facilitate this movement, Rawls refers repeatedly to ideal norms of ‘social cooperation’ and the ‘identity of interests’<sup>34</sup> that underscore the public and collective nature of the social experiment of the original position. The veil of ignorance, then, will be the device through which contract comes. Behind the veil, citizens discuss the principles of justice, and ‘each is forced to choose for all’,<sup>35</sup> until reflective equilibrium is reached in a ‘unanimous choice of a particular conception of justice’. Citizens deliberate over the conditions of justice, and from deliberation behind the veil comes transformation: ‘each [person] can make proposals, submit reasons for their acceptance’,<sup>36</sup> and by ‘by going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle’<sup>37</sup> we find a situation of final equilibrium, where participants agree and ‘principles and judgments coincide’.<sup>38</sup> ‘At that moment’, Rawls tells us, ‘everything is in order’,<sup>39</sup> for the principles of justice are known and agreed to by all. The contract is made. Justice, known by its principles, shall then be ‘the first order of social institutions’.<sup>40</sup> The transformation for Rawls, as with Rousseau, is one where personal power is transformed into collective union, into a contract given and made by all, to mitigate the conflicts over resources and inaugurate the transition to collective order.

### C. The ‘Sense of an Ending’

The final narrative move is to provide a ‘sense of an ending’ that gives meaning to the preceding narrative. The people behind the Rawlsian veil, after reaching deliberative equilibrium, go on to the just state, armed with first principles for their future. They must then ‘rely on one another to adhere to the principles adopted’,<sup>41</sup> for the contract agreement is ‘final and made in perpetuity’.<sup>42</sup> There is ‘no second chance’.<sup>43</sup> Rousseau’s citizens, similarly, go onto to enact and live according to the general will, which is also to persist throughout time. Rousseau tells us that the ‘clauses of the contract are so determined by the nature of the act [contracting] that the slightest modification would make them vain and ineffectual’.<sup>44</sup> We are left with a sense of a changed world, the

<sup>34</sup> *Ibid.*, 109.

<sup>35</sup> *Ibid.*, 121.

<sup>36</sup> *Ibid.*, 18.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, 3.

<sup>41</sup> *Ibid.*, 153.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Rousseau (n 9) 14.

formation of a contract from nature. Like the novelist, our social contract theorist creates an imagined space, populates it, and then transforms it in degree. The arc from exposition to climax to resolution allows us to see an ending to a particular struggle or set of struggles. When a reader lays down the text, she is left with this sense of change, the sense of normative and moral reconceptualisation, the ‘sense of an ending’.

As Frank Kermode suggests in his classic work, the end not only provides a sense of closure but also helps us make sense of the narrative as a whole.<sup>45</sup> Beginnings make sense only in retrospect and beginnings can, in fact, only be named once there is such a thing as an ending to cap the experience and define the activities. This is certainly the case in both Rousseau and Rawls, in that they construct their pre-contractual spaces uniquely in order to destroy them. The state of nature and the original position are never conceived of as continuing conditions and it is, in fact, quite evident that they have built these spaces only to tear them down. Writing with the ending in mind at all times, Rousseau and Rawls focus on outcomes—the creation of the civil state and the equitable institutions of justice—and then write backwards. For Rousseau, ‘[t]he passage from state of nature to the civil state produces in man a very remarkable change by substituting in his conduct justice for instinct, and by giving his actions the moral quality that they previously lacked’.<sup>46</sup> Men submit personal desire to public good and a ‘social order’ becomes ‘sacred right’.<sup>47</sup> Self-interest and the desire to be free of violence make the contract the desired ending, for each man in ‘giving himself to all, gives himself to nobody’.<sup>48</sup> That is to say that the general will, and the rights guaranteed to all within it, are now equal in a kind of manner that nature could not procure. This ending is perfect only because it is enabled by the human psychology and drama that Rousseau first furnished: the problem of personal power makes possible the resolution embodied in the general will.

This is completely analogous to the ending that Rawls has in mind. Never expecting people to remain in the original position—build houses or raise families there—Rawls exploits this device in order to arrive at his desired conclusion, a just society. Indeed, Rawls makes this point with uncharacteristic flair at the end of the first part of *A Theory of Justice*: ‘The fact that we start out assuming that the parties are mutually disinterested and have conflicting first-order desires . . . allows us to construct a comprehensive account. For once the principles of right and justice are on hand, they may be used to define the moral virtues just as in any other theory.’<sup>49</sup> Rawls continues to tell us that although ‘justice as fairness begins by taking the persons in the original position as individuals, or more accurately as continuing strands, this is no obstacle to explicating the higher-order moral sentiments that serve to bind a community of persons together’.<sup>50</sup> Thus, because

<sup>45</sup> Frank Kermode, *The Sense of an Ending: Studies in the Theory of Fiction* (Oxford University Press, 1967).

<sup>46</sup> Rousseau (n 9) 19.

<sup>47</sup> *Ibid.*, 5.

<sup>48</sup> *Ibid.*, 15.

<sup>49</sup> Rawls (n 10) 167.

<sup>50</sup> *Ibid.*

individuals, as portrayed by Rawls, have the higher-order moral sentiments that might bind them as a community, the original position and the processes of deliberation it embodies operate to work precisely upon this premise, to merge self-interest and higher-order capacities in a final agreement that mitigates human conflicts. Rawls's opening statement, that 'Justice is the first virtue of social institutions',<sup>51</sup> is thus initial speculation, desired outcome, and concluding state; nothing exists in the narrative that does not lead to this ending.

If the end defines one beginning through retrospective chronology, it also engenders another. The imaginative past and the transition to state order through contract converge with an imagined future. For Rousseau, that future is the general will; for Rawls, the principles of justice embodied in particular institutions. From contract come these futures, which erase or at least mitigate the maladies of the past, and portend a new future. The contract is an ending, but a new future exists that is, in all its forms, left to the reader. There will be no sequel. Rather, the form is given, the institutions made, and readers are left with a normative vision of the just society. This has been the intended end of the narrative endeavour and is also the beginning of a contract that will not be broken by time.

### III. WHAT DOES NARRATOLOGY DO FOR SOCIAL CONTRACT?

What, then, does narratology do in these theories? That is to say: why is a theory of narratology a useful analytic? Here, it may be useful to focus on two things that a narratological exploration adds to a reading of social contract theory. First, because these contract narratives share basic qualities, both structural and substantive, the reader is able to recognise each individual narrative as belonging to a set and is therefore able to read one in relation to another. In other words, readers understand one narrative because they have read other narratives that share analogous storylines, character development, and plot creation. Readers recognise, process, and ultimately understand narratives as they align with and fit into grooves created by other, similar narratives, and as they reflect common narrative elements that are not just formal but also substantive. It is, as Peter Brooks remarks, paraphrasing Aristotle, a notion of 'same-but-different' as well as the notion of narrative as extensive and extended metaphor.<sup>52</sup> 'Narrative operates as metaphor in its affirmation of resemblance, in that it brings into relation different actions, combines them through perceived similarities [and] ... appropriates them to a common plot.'<sup>53</sup> Relating this to the idea of the masterplot, Brooks adds that repetition is a 'binding

<sup>51</sup> *Ibid*, 3.

<sup>52</sup> Peter Brooks, 'Freud's Masterplot' (1977) 55 *Yale French Studies* 280.

<sup>53</sup> *Ibid*, 280.

of textual energies that allows them to be mastered by putting them into ... perceptible form: repetition, repeat, recall, symmetry, all these journeys back in the text, returns to and returns of, that allow us to bind one textual moment to another'.<sup>54</sup> Simply put, repetition creates impression and meaning in the reader's mind, allowing her to piece together propositions and understand the text in a resonant way.

The meaningful repetition that results from narratological analysis does work in two ways. First, repetition helps readers understand that the story exists not solely on its own but also as part of a set. A reader may certainly understand either Rousseau or Rawls on his own merits; however, flagging shared concerns and narratological elements adds another layer of meaning such that another reading, one that is deeper and richer through context and analogy, is available to the reader. In this sense, narratology helps the reader perceive, value and legitimate this or any 'masterplot'. Second, while repetition helps the reader to understand stories as sets and groups together the like 'masterplots', repetition also helps the author to underscore the value and legitimacy of the narratives as a set. Repetition highlights the idea that a basic storyline also has resonance beyond its internal scope and has an important place in the collective cultural imagination. In the case of the social contract theorists, the repetition gives weight to the idea of progression from political chaos to governmental order; through repetition the movement from violence, injustice or chaos to rule of law becomes an increasingly mythic story.<sup>55</sup> Through repetition, these social contract narratives become recognisable not only as a genre but also as a kind of legal-political super-narrative.

#### IV. CONCLUSION: FROM CONTRACT TO CONSTITUTION

Our socio-political self-understanding, whether as a citizen or a person, is embedded in narrative. Narrative enables us to make sense of time, and to locate ourselves in it. Narratives do this by demarcating beginnings, middles and endings. Narratives, too, locate within time certain plots and events, and link them to time. Here, the shared narrative has been one where a collection of people gathers at the beginning, weary of personal power, desirous of forming a contract together; where they deliberate and reach a consensus, forming a contract that inaugurates a collective order; and where this contract is made not

<sup>54</sup> *Ibid.*

<sup>55</sup> For a discussion of violence and the myths of political origin, see Hannah Arendt, *On Revolution* (Penguin Classics, 1991 [1963]). According to Arendt, who stresses the violence in the story of origins, 'Cain slew Abel, and Romulus slew Remus; violence was the beginning and, by the same token, no beginning could be made without using violence.' She adds, however, that '[t]he conviction that, in the beginning was a crime—for which the phrase "state of nature" is only a paraphrase—has carried through the centuries no less self-evident plausibility that the first sentence of St John 'In the beginning was the Word,' has possessed for the affairs of salvation' (p 10).

to be broken, made to persist throughout time. Narratology enables readers to understand the shared elements of these theories about the turn to law and collective order, to see what they share internally and how they interact externally.

This type of narratological analysis also enables a sustained comparative endeavour. It is possible to find shared tools not just among social contract theories, but also between social contract and constitutional narratives of origin. This will be the next step in our analysis, and we will endeavour to continue using narratology to make sense of historically situated constitutional narratives to see what they share with social contract stories. Of course, history, unlike theory, is full of exigency and contingency. There is no state of nature in history, nor is there an original position into which the multitudinous persons of modern states might enter. Exigency and contingency dictate, too, that a constitution can be both made and broken; it must be flexible enough to undergo sustained, if not continual, amendment. Despite these differences, we will endeavour to locate the shared narrative enterprises of constitutional history and social contract theory—to show how they are animated by a sense of possibility in a bounded space, how they operate along similar ‘masterplots’ involving a collective union embodied in textual commitments, and how they demarcate and make sense of political and legal time

In so doing, we aim to show that law and literature can lead to an enlightened understanding of the narratives that support the law and collective order, that tell the stories of origins—stories that no doubt give us reason to understand ourselves as involved in law’s perpetuation. By seeing how the narratives sequences and substantive parts interact, and how they interact externally with other narratives, we gain insight into the ways in which these narratives create meaning and organise time. As citizens, we can use this enlightened understanding to make sense of, and perhaps find reason to perpetuate, forms of collective social and legal ordering.

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